never be a witness, with a possible exception in the case of a bill of discovery filed directly against it. In such a case it has been held that a corporation is entitled to the privilege against self-incrimination.[7] But bills of discovery apply only to civil cases,[8] and it is therefore difficult to see how the corporation could assert the privilege in an investigation by the state, unless one adopts the apparently erroneous New York view that an officer on the stand represents the corporation. From the nature of the privilege, then, it is seen that the corporation may in one narrow class of cases be in a position to exercise it.

While, then, in a civil suit, it would seem that there is no reason for treating the corporation differently from a natural person, yet, in an investigation by the state, there is a difference arising from the very nature of a corporation and of corporate rights. The corporation receives its rights from the state and can act only in a manner prescribed by its creator. It has special privileges and franchises and must account for their use, and it would be subversive of justice to say that it could refuse to do so on the ground that it had abused them. Therefore, although a corporation is held by the principal case within the protection of the Fourth,[9] and has been held within the protection of the Fourteenth Amendment,[10] and probably would be protected by the clause in the Fifth forbidding double jeopardy, it would seem that its nature prevents it, as between it and the state, from receiving immunity from investigation and disclosure of its internal affairs.

THE GOVERNOR'S RIGHT TO SUE. — The executive power of the nation is lodged in the President, whereas that of the state is vested in a number of independent heads, each deriving his authority from the same source, the people. And while Supreme Court adjudications have tended to enlarge the scope of the presidential power, state decisions have strictly confined the governor, as one member of a multifarious executive, within his granted powers, denying him any inherent rights.[1] All state constitutions, but those of Massachusetts and New Hampshire, name as one of the duties of the governor that of seeing that the laws are faithfully executed.[2] The extent of the power thereby conferred was lately passed on by the Mississippi Supreme Court. The governor, believing a contract made by a state board to be in violation of the Constitution, called upon the attorney-general, who as a member of the board voted for the contract, to file a bill to enjoin its execution. Upon his refusal the governor himself brought suit

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[7] Logan *v.* Penna. Rd. Co., 132 Pa. St. 403.
[8] See Logan *v.* Penna. Rd. Co., *supra.*
[9] Hale *v.* Henkle, *supra.*
[10] Smyth *v.* Ames, 169 U. S. 466.

[1] For a general discussion see Goodnow, Administrative Law of the United States, bk. II c. III; Wyman, Administrative Law, c. VIII, and cases cited, especially Field *v.* People, 3 Ill. 79.

[2] The Massachusetts constitution (c. II, art. 4) and the New Hampshire constitution (art. 61) contain somewhat similar provisions. The constitutions in force down to 1894 have been generally relied on. In Professor Goodnow's excellent recent treatise, p. 104, occurs this astonishing statement: "As a general thing there is no provision in the state constitutions similar to that to be found in the United States Constitution, which makes it the duty of the chief executive to see that the laws be faithfully executed."

in the name of the state. By a majority vote the court dismissed his bill. *Henry* v. *State*, 39 So. Rep. 856.[8] The decision may be rested on the ground that the act to be restrained was discretionary with the board, and therefore not reviewable. Yet the jurisdictional question was discussed at length, and the power of the governor to file a bill under the circumstances is unequivocally denied by the majority opinion, which finds no warrant in the Constitution or in the Code for the governor's position. That official has been allowed to sue on bonds payable to the governor on behalf of the state, on the theory that the governor is a corporation sole.[4] Again, for purposes of suit between states, he represents his state, and by a rule of the United States Supreme Court service is to be made on the governor and attorney-general of a state.[5] A few states expressly authorize the governor to engage other counsel under certain disabilities of the attorney-general.[6] But under the general duty to see to the execution of the laws he has no inherent right to execute the laws himself.[7] He is, in fact, largely a supervisory official. But he may enforce the execution of the laws by the proper authority. Where the duty of another official is ministerial, the governor, and in many states any citizen, may bring mandamus for its performance.[8]

What, then, is the position of the attorney-general? His common-law duties as the law officer of the state are, in the absence of contrary provisions, his under the state constitutions.[9] Upon him devolves the duty to protect the state's interests from unlawful encroachments and violations of its political rights. In all but seven states he is an elective official.[10] That his office includes judicial as well as executive functions is attested by the fact that in about ten constitutions it is provided for under the judiciary clause. He is thus endowed with large, independent powers, and is responsible generally only to the people. Yet a few constitutions, such as that of Maryland, apparently place him under the governor's direction in regard to the propriety of bringing suit. By the Mississippi Code the governor may require him to proceed against defaulting county treasurers and to assist district-attorneys. But on failure in his duty of attending the Supreme Court terms the power to appoint counsel to represent the state is with the court. Of course, wherever the governor possesses directory power, he may enforce it by mandamus. But this does not allow him to bring suit himself to execute the functions placed by law in the attorney-general.[11] If the exercise of the power to bring suit is discretionary, the power must be vested

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[8] The case is criticised in 1 The Law 806.

[4] Gov. *v.* Allen, 8 Humph. (Tenn.) 176.

[5] Grayson *v.* Virginia, 3 Dall. (U. S.) 320. The right of the governor of Mississippi to sue in a foreign state is expressly given by statute. Rev. Code 1892, § 2167.

[6] See Alexander *v.* State, 56 Ga. 478; State *v.* Dubuclet, 25 La. An. 161, 27 La. An. 293; Orton *v.* State, 12 Wis. 509.

[7] Shields *v.* Bennett, 8 W. Va. 74, 89; *cf.* *In re* Fire, etc., Commissioners, 19 Col. 482; *In re* Neagle, 135 U. S. 1; Cahill *v.* State Auditors, 127 Mich. 487. For a collection of the authorities on the governor's implied power to engage counsel, see 55 L. R. A. 493, n.

[8] State *v.* Crawford, 28 Fla. 441; State *v.* Buchanan, 24 W. Va. 362.

[9] See People *v.* Miner, 2 Lans. (N. Y.) 396.

[10] Delaware, New Jersey, Pennsylvania, Maine, New Hampshire, Wyoming, and Tennessee. In the last named state the appointive power lies with the Supreme Court.

[11] In Wisconsin it is held that even a private citizen may restrain the violation of a public law upon the attorney-general's refusal to act. State *v.* Cunningham, 83 Wis. 90.

in him absolutely, and not subject to the mandate of the governor. If the attorney-general is recusant or hostile to the state's interests, the remedy is in impeachment or in legislative aid.

CONTRACTS FOR DISPLAY ADVERTISEMENTS. — Where a landowner agrees for a valuable consideration to allow the display of a sign upon his premises, an important question arises as to the nature of the right thus created. Three lines of reasoning have been suggested by the cases which have arisen: that the agreement constitutes a lease;[1] that it amounts only to a license;[2] and that it gives rise to an easement. The last view is expressed in a recent decision of the Kentucky Court of Appeals. *Levy* v. *Louisville Gunning System*, 89 S. W. Rep. 528.

A permissive occupation conferring a legal possession is essential to the relation of landlord and tenant.[3] A licensee, however, need not be and ordinarily is not in possession, but has the right to do an act or a series of acts on the land of his licensor.[4] An advertiser does not acquire possession of the wall whereon his advertisement is posted, but simply gains a right to do certain acts on the land of another. Where this right is created by oral agreement, his position is that of a licensee. His right, therefore, is subject to be revoked at the pleasure of his licensor, though, where the license is founded on a valuable consideration and is given for a definite period, a premature revocation would give rise to a right of action for breach of contract.[5] As a license is terminated by any act of the licensor showing an intention to revoke, a subsequent conveyance of any interest in the property inconsistent with the continued enjoyment of the licensee's right would amount to a revocation.[6] Where, however, the agreement is under seal, the only square decision on the subject is to the effect that a right in gross is created in the nature of an easement,[7] which is irrevocable by the grantor, is good against his subsequent grantee or lessee, and will be protected from interruption by a court of equity.[8] Where the agreement is in writing not under seal, the advertiser acquires only the rights of a licensee, according to the present weight of authority. It is submitted, however, that the agreement is valid as a contract to grant an easement and should be specifically enforceable in equity,[9] — at least in jurisdictions which recognize easements in gross.

In any event, whether easement or license, the grant of such a right by the lessee of premises would not be a breach of his covenant not to sub-let.[10] But where a lessee with such a covenant leased the roof of a building together with the right to maintain a sign thereon, the parties manifestly created the relation of sub-lessee in violation of the covenant.[11] So, where

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1 Snyder *v.* Hersberg, 11 Phila. (Pa.) 200.
2 Wilson *v.* Travener, [1901] 1 Ch. 578; and see Reynolds *v.* Van Beuren, 155 N. Y. 120.
3 See Jones, Landlord & Tenant, § 40.
4 See Cook *v.* Stearns, 11 Mass. 533; Jones, Landlord & Tenant, § 36.
5 Kerrison *v.* Smith, [1897] 2 Q. B. 445.
6 Eckerson *v.* Crippen, 110 N. Y. 585.
7 Willoughby *v.* Lawrence, 116 Ill. 11.
8 Gunning Co. *v.* Cusack, 50 Ill. App. 290.
9 See Gunning Co. *v.* Cusack, *supra*; Witherell *v.* Brobst, 23 Ia. 586.
10 Lowell *v.* Strahan, 145 Mass. 1.
11 See Gude Co. *v.* Farley, 28 N. Y. Misc. 184.